

JUL 22 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ANTONIO ORTIZ-ORJEDA,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 08-70674

Agency No. A75-720-003

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 14, 2008 **

Before: SCHROEDER, LEAVY and IKUTA, Circuit Judges.

This is a petition for review of the Board of Immigration Appeals' ("BIA")
order denying petitioner's motion to reopen removal proceedings.

We review the BIA's denial of a motion to reopen for abuse of discretion.

See Rodriguez-Lariz v. INS, 282 F.3d 1218, 1222 (9th Cir. 2002).

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

The regulations provide that “a party may file only one motion to reopen,” and that the motion “must be filed no later than 90 days after the date on which the final administrative decision was rendered in the proceeding sought to be reopened.” *See* 8 C.F.R. § 1003.2(c)(2). The BIA did not abuse its discretion in denying petitioner’s motion to reopen because it was filed on July 30, 2007, more than 90 days after the August 10, 2006 final administrative decision was rendered, and petitioner had failed to demonstrate a basis for equitable tolling of the filing requirements. Accordingly, respondent’s motion for summary disposition in part is granted because the questions raised by this petition for review are so insubstantial as not to require further argument. *See United States v. Hooton*, 693 F.2d 857, 858 (9th Cir. 1982) (per curiam).

We lack jurisdiction to review the BIA’s decision declining to exercise its sua sponte authority to reopen proceedings. *See Ekimian v. INS*, 303 F.3d 1153, 1159 (9th Cir. 2002). Accordingly, respondent’s motion to dismiss this petition for review in part for lack of jurisdiction is granted.

The motion to proceed in forma pauperis is granted. The motion for a stay of removal pending review is denied as moot. The temporary stay of removal confirmed by Ninth Circuit General Order 6.4(c) shall continue in effect until issuance of the mandate.

PETITION FOR REVIEW DENIED in part; DISMISSED in part.